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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,643	09/30/2003	Victor T. Massey	081589-0306133	1141

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BERENATO, WHITE & STAVISH, LLC
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EXAMINER

STRIMBU, GREGORY J

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/673,643	MASSEY ET AL.	
	Examiner	Art Unit	
	Gregory J. Strimbu	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Specification

The amendment filed September 28, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: a spacer which abuts the outer edge of the passive door. See claims 1 and 23. Figure 2 of the instant application clearly shows a gap between the spacer 62 and the passive door 16. Moreover, paragraph 37 of the instant application does not state that the spacer 62 engages the passive door. Paragraph 37 merely states that the spacer forms "a small gap between the outer edge of the passive door" which agrees with the gap shown in figure 2. The applicant has additionally amended claim 32 to recite "the side portion having a spacer extending outwardly from a central portion thereof". Assuming that the central portion thereof comprises the central portion of the side portion, said new recitation comprises material which is not supported by the original disclosure. Note that figure 2 of the instant application shows the spacer 62 extending from the upper side of the side portion 36 and the specification does not support such a recitation.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

Claims 1-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "therebetween" on line 7 of claim 1 render the claims indefinite because it is unclear what elements of the invention therebetween encompasses. Is the applicant referring to air flow between the side portion and the passive door, between the passive door and the distal end of the spacer, or both?

Recitations such as "an opposed side" on line 3 of claim 32 render the claims indefinite because it is unclear to what element of the invention the side is opposed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-8, 10-17 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Hagemeyer et al. Hagemeyer et al. discloses an astragal assembly 62 comprising a metallic rail 79 having an exterior portion (not numbered, but shown in figure 6 as the lowermost portion of the rail), an interior portion (not numbered, but shown in figure 6 as the horizontal portions extending towards each other into the wooden insert 78 on both the left and right hand sides of the rail) spaced from and opposed to the exterior portion, and a side portion (not numbered, but shown in figure 6 on the right hand side of the rail connecting the right hand side of the interior portion to the exterior portion) extending between the exterior portion and the interior portion, and a spacer (not numbered, but comprising the portion of the rail extending perpendicularly

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to the right from the side portion) extending outwardly from the side portion and having a distal end (not numbered, but comprising the portion of the rail which extends perpendicularly towards the passive door) which abuts the outer edge of the passive door when the astragal assembly is affixed thereto to allow air flow therebetween, wherein an elongated open channel (not numbered, but shown in figure 6) is defined in the metallic rail with sides formed by the exterior portion and the interior portion and a base formed by the side portion; the elongated open channel having an opening (not numbered, but shown in figure 6 opening to the left) extending between the exterior portion and the interior portion and opposed to the side portion, and a wooden insert 78 retained within the elongated open channel in the metallic rail, hardware (not numbered, but shown in figure 6 as the screw) is attached directly to the insert, an interior flange (not numbered, but shown in figure 6 extending above the wooden insert 78), a stop shown in figure 6 receiving the gasket 54, an exterior flange (not numbered, but shown in figure 6 as the two stepped portions of the rail which extend toward the right), a passive door 28, an active door 26, the side portion includes a thermal break (not numbered, but comprising the gap between the spacer distal end and the side portion).

Claims 1 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wendt. Wendt discloses an astragal assembly for attachment to a passive door, comprising: a metallic rail 22 having an exterior portion 25, an interior portion 26 spaced from and opposed to the exterior portion, and a side portion 23 extending between the exterior portion and the interior portion, and a spacer 24 extending outwardly from the

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side portion and having a distal end (not numbered, but shown in figure 3) which is adapted to abut the outer edge of the passive door when the astragal assembly is affixed thereto to allow air flow therebetween, wherein an elongated open channel is defined in the metallic rail with sides formed by the exterior portion and the interior portion and a base formed by the side portion; the elongated open channel having an opening (not numbered, but shown in figure 3) extending between the exterior portion and the interior portion and opposed to the side portion; and a wooden insert 19 retained within the elongated open channel in the metallic rail, the side portion includes openings (not shown, but comprising the openings for receiving the screws 47 as shown in figure 3) to receive fasteners 47.

Claims 23, 25-29 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Procton. Procton discloses a door assembly, comprising: a passive door 11 having an outer edge (not numbered, but shown in figure 2); an active door 12 having an outer edge (not numbered, but shown in figure 2), wherein the active door is mounted for movement between an open position and a closed position in which the outer edge is aligned with the outer edge of the passive door; an astragal 10 coupled to the outer edge of the passive door, wherein the astragal includes a metallic rail 15 having an exterior portion 33, an interior portion 22 spaced from and opposed to the exterior portion, and a side portion 20 that extends between the exterior portion and the interior portion and abuts the outer edge of the passive door, wherein an elongated open channel is defined in the metallic rail with sides formed by the exterior portion and

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the interior portion and a base formed by the side portion, and a spacer (not numbered, but comprising the member extending generally perpendicularly to the side portion and then generally parallel to the side portion 20) extending outwardly from the side portion and having a distal end (not numbered, but shown in figure 2) abutting the outer edge of the passive door to allow air flow therebetween, wherein the elongated open channel is defined in the metallic rail 15 which sides formed by the exterior portion 33 and the interior portion 22 and a base formed by the side portion 20, wherein the elongated open channel has an opening extending between the exterior portion and the interior portion and opposed to the side portion, and the opening facing away from the outer edge of the passive door, and wherein a wooden insert 16 is retained within the elongated open channel in the metallic rail that faces the active door in the closed position, the exterior portion includes a hollow section (not numbered, but shown as the channel left of the side wall 19 in figure 2), the side portion 20 includes a thermal break (not numbered, but shown as the space between the side portion and the spacer extending to the right of and parallel to the side portion as shown in figure 2), door hardware 35 comprising a strike plate, the wooden insert has a U-shaped cross section formed by the U-shaped channel which receives the protrusion 21, a fastener 36, a gasket 17.

Claims 32, 35, 36 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Hagemeyer et al. Hagemeyer et al. discloses an astragal comprising an extruded aluminum rail 79 with an exterior portion (not numbered, but comprising the

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lower most portion of the rail as shown in figure 6) having an exterior flange (not numbered, but shown in figure 6 as the two stepped portions of the rail which extend toward the right), extending from a first side and a stop (not numbered, but comprising the portion of the exterior portion which retains the gasket 54) extending from an opposed side, an interior portion (not numbered, but shown in figure 6 as the horizontal portions extending towards each other into the wooden insert 78 on both the left and right hand sides of the rail) spaced from and opposed to the exterior portion, and a side portion (not numbered, but shown in figure 6 on the right hand side of the rail connecting the right hand side of the interior portion to the exterior portion) extending between the exterior portion and the interior portion having a fastening formation, the side portion having a spacer (not numbered, but comprising the portion of the rail extending perpendicularly to the right from the side portion) extending outwardly from a central portion thereof since the spacer is spaced outwardly away from a central portion of the side portion; and an insert 78 retained within a channel in the extruded aluminum rail formed by the exterior portion, the interior portion and the side portion, wherein the insert presents an outer surface for attachment to hardware and the spacer extends away from the channel, the side portion includes a thermal break (not numbered, but comprising the space between the passive door and the side portion).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagemeyer et al. as applied to claims 1-3, 5-8, 10-17 and 22 above, and further in view of Germano. Germano discloses an astragal comprising a multiple pieces of wood.

It would have been obvious to one of ordinary skill in the art to provide Hagemeyer et al., with a construction, as taught by Germano, to reduce the cost of manufacturing the assembly.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hagemeyer et al. as applied to claims 1-3, 5-8, 10-17 and 22 above, and further in view of Massey et al. Massey et al. discloses an astragal 19 including a strike plate 21.

It would have been obvious to one of ordinary skill in the art to provide Hagemeyer et al. with a strike plate, as taught by Massey et al., to be able to securely latch the door to the astragal.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hagemeyer et al. as applied to claims 1-3, 5-8, 10-17 and 22 above, and further in view of Procton. Procton discloses an astragal assembly comprising hooks 21 and 22 for engaging a wooden insert 16.

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It would have been obvious to one of ordinary skill in the art to provide Hagemeyer et al. with hooks, as taught by Procton, to better engage and retain the wooden insert.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Procton as applied to claims 23, 25-29 and 31 above, and further in view of Hagemeyer et al. Hagemeyer et al. discloses an astragal having an interior flange (not numbered, but shown in figure 6 at the upper portion of the wooden insert 78).

It would have been obvious to one of ordinary skill in the art to provide Procton with an interior flange, as taught by Hagemeyer et al., to better attach the astragal to the passive door.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Procton as applied to claims 23, 25-29 and 31 above, and further in view of Hagemeyer et al.

Hagemeyer et al. discloses a metallic rail 79 having a side portion (not numbered, but shown in figure 6) and a fastener (not numbered, but shown in figure 6 as the screw) extending through the side portion into the outer edge of a passive door 28.

It would have been obvious to one of ordinary skill in the art to provide Procton with a fastener arrangement, as taught by Hagemeyer et al., to better attach the astragal to the passive door.

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Claims 33 and 34 rejected under 35 U.S.C. 103(a) as being unpatentable over Hagemeyer et al. as applied to claims 32, 35, 36 and 38 above, and further in view of Procton. Procton discloses an astragal comprising hooks 21 and 22.

It would have been obvious to one of ordinary skill in the art to provide Hagemeyer et al. with hooks, as taught by Procton, to better engage and retain the insert in the rail.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hagemeyer et al. as applied to claims 32, 35, 36 and 38 above, and further in view of Massey et al. Massey et al. discloses an astragal 19 including a strike plate 21.

It would have been obvious to one of ordinary skill in the art to provide Hagemeyer et al. with a strike plate, as taught by Massey et al., to be able to securely latch the door to the astragal.

Response to Arguments

Applicant's arguments filed September 28, 2006 have been fully considered but they are not persuasive.

With respect to the applicant's comments concerning Hagemeyer et al., the examiner respectfully disagrees. It should first be pointed out that only claim 23 actually requires the distal end of the spacer to abut the passive door. Claim 23 has been anticipated by Procton which clearly shows the engagement of the spacer with the passive door. Claim 1 only requires the distal end of the spacer to be capable of

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abutting the passive door. The distal end of Hagemeyer et al. is clearly capable of engaging a properly sized passive door even though the spacer disclosed by Hagemeyer et al. does not engage the passive door. Note that the applicant is, in claim 1, only claiming the subcombination of the astragal assembly rather than the combination of the astragal assembly and the passive door. The channel formed by Hagemeyer et al. in the rejection above faces to the left as shown in figure 6. Therefore, the channel faces away from the passive door.

The applicant's comments concerning Wendt are not persuasive. Wendt discloses a spacer 24 which extends outwardly from and parallel to the side portion. The spacer would create a space between the passive door and the side portion which would allow air to flow therebetween.

The applicant's comments concerning Procton are also not persuasive. The portion of the rail 15 which extends parallel to the side portion 20 comprises the spacer which clearly abuts the passive door 11. Moreover, the spacer forms a gap between itself and the side portion 20 and the passive door to allow for air flow therein.

Conclusion

THIS ACTION IS NOT MADE FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-

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272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a long horizontal flourish extending to the right.

Gregory J. Strimbu
Primary Examiner
Art Unit 3634
October 13, 2006